



Chairman Julius Genachowski
Commissioner Meredith Attwell Baker
Commissioner Mignon Clyburn
Commissioner Michael J. Copps
Commissioner Robert M. McDowell

Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

GN Docket No. 10-127

July 15, 2010

Dear Chairman Genachowski and Commissioners Baker, Clyburn, Copps and McDowell:

Thank you for the opportunity to offer comments on the proposal to bring broadband information services under Title II of the 1934 Act. While we share your goals of preserving an open Internet and enabling universal broadband deployment and adoption, we fear the proposed “third way” approach will undermine these objectives, reducing investment, stalling economic recovery and inhibiting the pace of broadband progress in America.

This proposal seems intended to fit changed legal circumstances rather than evolving market realities. It could disserve consumers by threatening the continued growth of the industry at a time when increased innovation, investment and job creation are critical to the economy. Recognizing this reality, a bipartisan majority in Congress has urged the Commission to shelve this proposal and let the elected lawmakers lead. Instead of re-defining new technologies to fit old regulatory categories, the FCC should allow Congress to craft clear and narrowly tailored authority that enables the Commission to accomplish specific, focused objectives.

The Internet Innovation Alliance believes the biggest challenges to universal broadband adoption in America right now include:

- The need for ongoing investment in network capacity (up to \$350 billion according to FCC estimates) despite significant economic headwinds and uncertainty for investors, to support the bandwidth required by 50,000,000 new customers and ever-more-robust applications;



- The need for digital literacy programs that target the 37 percent of Americans who have access to broadband but have not signed up for service, either because they do not know how to use the services or do not appreciate how it would benefit their lives;¹
- The need to expand the amount of wireless spectrum available while enhancing effective network management strategies;
- The need to improve enforcement efforts in the face of exponentially-increasing cyber attacks and fraud.

The IIA shares the belief that competition among ISPs and the free and open nature of the Internet have been essential to broadband's success and remain critical to its future. However, the free and open Internet is *not* at risk. We are unaware of any current examples of ISPs "blocking or degrading" web sites or broadband traffic. And the few allegedly "bad actions" by ISPs over the past five years have quickly resulted in prompt reversals. The FCC should not expand regulatory risk, even with promises of forbearance, to protect against hypothetical harm.

Of great concern, this proposal threatens to undermine investment by adding significant uncertainty and depressing returns. Analysts and expert observers have overwhelmingly identified this proposal as a negative blow to America's economic recovery and investment in broadband. For example:

- "Reclassifying broadband to bring it under FCC jurisdiction is the 'the nuclear option'...This would call into question virtually every assumption about the terminal value of networks...Markets abhor uncertainty. Today (day of FCC's announcement that it will push forward with Title II reclassification of broadband) we got uncertainty in spades...this development is an unequivocal negative." (Sanford Bernstein Senior Analyst Craig Moffett)
- "...Decreased investments by broadband service providers will hinder capital expenditures by others in the ecosystem, particularly those at the edge...the imposition of network neutrality rules could have devastating impacts across the ecosystem between 2010 and 2015. A 10 percent decrease in investment by wireline and wireless broadband service providers, coupled with likely spillover effects, could result in the loss of 502,000 jobs across the entire ecosystem and would have a negative impact on U.S. GDP on the order of approximately \$62 billion per year."

¹ Horrigan, John. "Home Broadband Adoption 2009." Pew Internet & American Life Project. June 2009.



([Study](#): Davidson, Charles and Bret Swanson. "Net Neutrality, Investment & Jobs: Assessing the Potential Impacts of the FCC's Proposed Net Neutrality Rules on the Broadband Ecosystem." New York Law School. June 2010.)

- "Net neutrality acts like a tax on the Internet. It imposes overheads on network operators, which, in turn, decrease network investments, providing less opportunity, not only for the operators, but also for those that use the operators' networks as well." ([Study](#): Jude, Michael. "Net Neutrality: Impact on the Consumer and Economic Growth." Frost & Sullivan. May 2010.)
- "[The "third-way" regulation angle] creates potential long-term negative investment (and competitive) implications for major cable broadband providers." (Standard & Poor's Analyst Tuna Amobi)

IIA also fears the proposed new regulations are more likely to widen the digital divide than close it. By deterring new investment where and when it is needed most, this regulatory approach could add to the cost of service and price broadband beyond the reach of many low and moderate-income Americans. Experts on the digital divide have not cited "lack of common carrier regulations" as either a cause or a cure for race or income-based differences in broadband adoption. Nor did former Pew researcher John Horrigan find any non-users of broadband citing concerns over the future of the free and open Internet as the basis for their failure to buy broadband.

A groundbreaking December 2009 poll of 700 African Americans and 200 Latinos conducted by former Obama Campaign pollster Cornell Belcher found that the main reasons that non-Internet users in communities of color remain offline are (1) they do not see the need/value, (2) they lack computers or smart phones and (3) they lack the digital literacy and online confidence.² We understand how to remedy all of these challenges, none of which would be solved or even addressed by this proposal.

We believe that minimal regulation and consistent bipartisanship will lead to maximum investment and innovation. Regrettably, the "third way" expanding Title II would maximize regulation and ignore the bipartisan majority. The Commission should shelve this proposal and await focused and narrowly-tailored legislation from Congress that authorizes core elements of the National

² Belcher, Cornell. "Internet Innovations." Brilliant Corners Research. December 2009.



Broadband Plan, including initiatives to promote digital literacy, universal service reform and expand spectrum availability.

Thank you for your careful consideration of our views.

Sincerely,

A handwritten signature in black ink, appearing to read 'BM', followed by a long horizontal flourish.

Bruce Mehlman

A handwritten signature in black ink, appearing to read 'DS', followed by several overlapping loops and a horizontal line.

David Sutphen

Co-Chairmen, Internet Innovation Alliance